

APPLICANTS:
Robert and Cathy Barenski

REQUEST: A variance to permit an
addition within the required side yard
setback

HEARING DATE: April 20, 2005

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5479

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Robert and Cathy Barenski

LOCATION: 808 Lynch Terrace / Lynch Subdivision, Fallston
Tax Map: 55 / Grid: 1B / Parcel: 785 / Lot: 1
Third Election District (3rd)

ZONING: AG / Agricultural

REQUEST: A variance pursuant to Section 267-34C, Table II, of the Harford County Code, to permit an addition to encroach the required 20 foot side yard setback (11 foot setback proposed).

TESTIMONY AND EVIDENCE OF RECORD:

The testimony of the Applicants is that they purchased the subject property approximately six years ago. They described the house on this approximately one-half acre lot as having two bedrooms, and being about 800 square feet in total size. The Applicants have two children and need more room. They propose a fairly significant 1,600 square foot, two-story addition to the southwest side of the house, which would be between their existing house and that of their adjoining neighbor. The property itself sits at the intersection of Lynch Terrace and Laurel Brook Road.

While the house sits on an adequately sized half acre lot, the rear part of the property is improved by the Applicants' septic system and septic reserve area. Accordingly, improvements cannot be built in that area without significant changes to the septic system. That portion of their lot which lies on Laurel Brook Road is also encumbered by a setback, for which a variance would be necessary.

The side of the home on which the addition is proposed is the side which adjoins their next door neighbor, Mildred Hopkins. Interestingly, the improvements on the subject property are separated from the next door neighbor's home by not only the existence of the originally platted side yards, but also by a 20 foot right-of-way which lies between the residences, and which has since been purchased by the next door neighbor.

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Because of the lot constraints and the existence of the right-of-way between the two properties, which effectively increases the distance between the two homes, the Applicants feel their property is unique and accordingly supports their request for an 8 foot variance to the required 20 foot side yard setback.

Ms. Mildred Hopkins, the next door neighbor, obtained a setback variance herself in October of the year 2000 (Case No. 5078) in order to construct a two-car garage on her property.

No neighbor has expressed any opposition to the request. Ms. Hopkins submitted a letter to the file indicating her support.

The Applicants testified the siding on the proposed addition will match that of the existing home.

For the Harford County Department of Planning and Zoning testified Dennis Sigler. Mr. Sigler repeated the Department's findings that the property is unique:

“The building area of this corner lot is constrained by the location of the well in the front yard and the septic tank and drain field located immediately behind the dwelling. The Applicants own one of the smallest dwellings in the subdivision and the addition will be compatible with other homes in the community. The request will not have an adverse impact on adjacent properties or the intent of the code.”

No evidence or testimony was presented in opposition to the request.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

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(2) *The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*

C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

According to the Staff Report, the Applicants’ home is located in an area of relatively diverse building types, ranging in size from small ranchers to larger two story colonials. The Applicants propose to construct a 1,600 square foot, two story addition to their home. The resulting home, which will total about 2,400 square feet in size, will not be out of keeping with the area, and will indeed be compatible with many other homes in the Fallston area.

The subject property is a corner lot. It would be difficult for the Applicants to construct an addition to the rear of their home given the location of the existing septic area and drain field. An addition built to the Laurel Brook side of the property would also require a variance. While the Applicants did not express a concern about the traffic on Laurel Brook Road, it would seem that an addition to the Laurel Brook Road side of the existing home would not be as desirable as one to the opposite side, given the traffic carried by Laurel Brook Road and the resulting noise.

Accordingly, the only remaining area for the proposed addition is on the southwest side, which borders the lot owned by Ms. Hopkins. Ms. Hopkins has expressed support for the application.

While the variance would result in the improvements to be constructed being located approximately 12 feet from the side yard lot line (with an 8 foot variance), in fact the property is separated by an additional 20 feet from the original lot line of Ms. Hopkins due to an existing right-of-way which, according to Mr. Sigler of the Harford County Department of Planning and Zoning, was once a part of the subject property lot. In essence, the 20 foot right-of-way, now owned by Ms. Hopkins, acts as an additional buffer between the proposed improvement and the house of Ms. Hopkins.

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In order to be granted the variance the Applicants must show that their property is in some fashion unique. This unique feature must cause the Applicants a hardship, which a variance can alleviate. The Applicants have adequately met this standard. Their property is a fairly average sized lot, improved by a relatively small home. An improvement to the home would clearly be compatible with other homes in the neighborhood, and is certainly desirable for the Applicants' family. They are constrained from constructing an addition, however, by the existing setbacks and the existence of the septic reserve area in the rear. This factor causes the Applicants the practical difficulty of being unable to improve their property similar to others in the neighborhood.

It is further found there will be no adverse impact to any adjoining neighbor or property if the variance were granted for reasons stated above, and that the variance requested is the minimum necessary.

CONCLUSION:

It is accordingly recommended that the requested variance be granted, subject to the Applicants obtaining all necessary permits and inspections.

Date: May 20, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JUNE 20, 2005.